Court of Appeals, State of Michigan

ORDER

People of MI v Andrew Michael Czarnecki

Docket No. 348732

LC No. 16-010813-01-FC

Colleen A. O'Brien
Presiding Judge

Mark T. Boonstra

Michael F. Gadola
Judges

The motion for reconsideration filed by attorney Adrienne N. Young is GRANTED in part in that the Court is deleting the statement that counsel filed a motion "explaining that the issue was not raised in this Court because defendant's counsel was too busy." This Court's opinion issued October 19, 2023 is hereby VACATED. A new opinion is attached to this order. In all other respects, the motion for reconsideration is DENIED.

The motion for reconsideration filed by defendant-appellant Czarnecki is DENIED.

Colleen A. O'Brien
Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 14, 2023
Date

Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	FOR PUBLICATION December 14, 2023 9:05 a.m.
v	No. 348732 Wayne Circuit Court
ANDREW MICHAEL CZARNECKI, Defendant-Appellant.	LC No. 16-010813-01-FC

ON REMAND, ON RECONSIDERATION

Before: O'BRIEN, P.J., and BOONSTRA and GADOLA, JJ.

PER CURIAM.

This case returns to us following remand from our Supreme Court. In defendant's original appeal, he raised three issues in his appellate brief and nine issues in a Standard 4 brief. In a 25-page opinion, this Court addressed all of defendant's appellate arguments and concluded that none of them entitled defendant to relief. *People v Czarnecki*, unpublished per curiam opinion of the Court of Appeals, issued June 10, 2021 (Docket No. 348732), remanded in part, lv den in part 510 Mich 1093 (2022).[1] Defendant appealed to our Supreme Court, and while his application was pending, defendant motioned to "add as an issue to his application for leave to appeal the question of whether his mandatory life without parole sentence is constitutional." Our Supreme Court granted defendant's motion and held the appeal in abeyance pending its decision in *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022). *People v Czarnecki*, ___ Mich ___; 967 NW2d 609 (2022). After *Parks* was decided, our Supreme Court remanded the case to this Court "for consideration of whether the defendant's mandatory sentence of life without parole for a murder committed at the age of 19 is cruel or unusual punishment under Const 1963, art 1, § 16," but denied defendant's

[1] Judge STEPHENS sat on the original panel, but she has since retired, and Judge GADOLA is serving in her stead.

application to the extent that it contested any of the issues actually decided by this Court. *People v Czarnecki*, 510 Mich 1093, 1093 (2022).

The only facts relevant on remand are that defendant was sentenced to mandatory life in prison without the possibility of parole for a first-degree murder that he committed at the age of 19.[2] In *Parks*, 510 Mich at 268, our Supreme Court held that "mandatorily subjecting 18-year-old defendants convicted of first-degree murder to a sentence of life without parole violates the principle of proportionality derived from the Michigan Constitution, and thus constitutes unconstitutionally cruel punishment under Const 1963, art 1, § 16." Previously, however, in *People v Hall*, 396 Mich 650, 657-658; 242 NW2d 377 (1976), our Supreme Court upheld the constitutionality of a sentence of life without parole for a defendant convicted of felony murder, expressly rejecting the defendant's argument that such a sentence constitutes cruel or unusual punishment under Const 1963, art 1, § 16. See also *People v Adamowicz (On Second Remand)*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 330612); slip op at 3. Our Supreme Court in *Parks* explicitly limited the effect its opinion had on *Hall*, stating that its "opinion today does not affect *Hall*'s holding as to those older than 18." *Parks*, 510 Mich at 255 n 9. See also *Adamowicz (On Second Remand)*, ___ Mich App at ___; slip op at 4. From this, it follows that *Hall*'s holding continues to apply to those older than 18.[3] This understanding of *Parks* and *Hall* is consistent with this Court's recent decision in *Adamowicz (On Second Remand)*, where this Court held that *Hall* compelled the conclusion that subjecting a 21-year-old defendant to a mandatory sentence of life without the possibility of parole did not constitute cruel or unusual punishment under the Michigan Constitution. *Adamowicz (On Second Remand)*, ___ Mich App at ___; slip op at 4.

Adamowicz (On Second Remand) is not controlling in this case, however, because, again, defendant here was 19 when he committed the first-degree murder. Nevertheless, on the basis of *Hall*, we reach the same result as this Court did in *Adamowicz (On Second Remand)*. Before *Parks*

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[2] Our Supreme Court's remand order seems to contemplate only a facial challenge given the lack of reference to any facts specific to defendant other than his age. But even if the remand order allowed an as-applied challenge, defendant's argument on remand only addresses 19-year-olds generally, not anything specific to defendant. We therefore treat defendant's argument as only raising a facial challenge, and consider any as-applied challenge abandoned. See *People v Smith*, 439 Mich 954, 954 (1992) ("A party who seeks to raise an issue on appeal but who fails to brief it may properly be considered to have abandoned the issue.").

[3] Even if this conclusion is not a necessary implication of *Parks*, *Hall* did not limit its holding to defendants of a certain age. The only reasonable conclusion to draw from this is that, when *Hall* was decided, it applied to all defendants, including 19-year-old ones.

We acknowledge that, in *Parks*, our Supreme Court opined that *Hall* did "not preclude" *Parks*' holding because *Hall* "did not address the issue of sentencing a *juvenile* to life without parole." *Parks*, 510 Mich at 255 n 9. But, again, as we read *Hall*, its holding necessarily applies to 19-year-old defendants. This in turn precludes *this Court* from deciding the issue differently, regardless of whether 19-year-old defendants are "juveniles." See *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191-192; 880 NW2d 765 (2016).

was decided, defendant's sentence of life imprisonment without the possibility of parole did not constitute cruel or unusual punishment under Const 1963, art 1, § 16 according to *Hall*, 396 Mich at 657-658. *Parks* explicitly stated that its "opinion today does not affect *Hall*'s holding as to those older than 18." *Parks*, 510 Mich at 255 n 9. Accordingly, following *Parks*, defendant's mandatory life-without-parole sentence for a first-degree murder committed at the age of 19 continues to not be cruel or unusual punishment under Const 1963, art 1, § 16 according to *Hall*, 396 Mich at 657-658.[4, 5] See *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191-192; 880 NW2d 765 (2016) ("The Court of Appeals is bound to follow decisions by this Court except where those decisions have *clearly* been overruled or superseded *and is not authorized to anticipatorily ignore our decisions where it determines that the foundations of a Supreme Court decision have been undermined*.") (Footnote omitted; emphasis in original.)[6]

Affirmed.

/s/ Colleen A. O'Brien
/s/ Michael F. Gadola

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[4] This is consistent with other panels' understanding of the continuing validity of *Hall*. See *People v Gelia*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023, p 2 (holding that a 19-year-old defendant's mandatory life-without-parole sentence did not violate Const 1963, art 1, § 16 because "*Hall* remains good law," and any further analysis "would be an exercise in futility and *obiter dictum*"); *People v Taylor*, unpublished per curiam opinion of the Court of Appeals, issued October 5, 2023, p 3 (holding that a 20-year-old defendant's mandatory life-without-parole sentence did not violate Const 1963, art 1, § 16 because "*Hall* remains good law as applied to adults other than those aged 18, and is still binding on this Court").

[5] On remand, this Court permitted the parties to file supplemental briefs. In defendant's brief, he does not explain how, in light of *Hall*'s holding, this Court can conclude that defendant's sentence of life without parole constituted cruel or unusual punishment under Const 1963, art 1, § 16. In fact, defendant's brief does not mention *Hall* at all. This is rather surprising because *Adamowicz (On Second Remand)* was released one month before the supplemental briefs in this case were filed, and this Court in *Adamowicz (On Second Remand)* reached the same conclusion we do—that this Court is bound by *Hall*'s holding and "that holding precludes defendant's argument." *Adamowicz (On Second Remand)*, ___ Mich App at ___; slip op at 4. We also note that defendant's counsel in this case is the same as the defendant's counsel in *Adamowicz (On Second Remand)*, and this Court in *Adamowicz (On Second Remand)* specifically criticized the defendant's inexcusable failure to cite *Hall* in his brief for that case. See *id*. at ___; slip op at 4 ("Remarkably, defendant's brief contains no citation to *Hall*, despite the duty to raise controlling case law. See MRPC 3.3(a)(3). This failure is not excused by the fact that the remand order directs us to re-consider defendant's arguments in light of *Parks*, since, as we just noted, *Parks* recognized *Hall* as still controlling for those over the age of 18, which includes defendant.").

[6] Despite the shortness of this opinion, we recognize the seriousness of the issue. That said, only the Supreme Court can overrule *Hall*'s holding, and it explicitly declined to do so further in *Parks*. There is simply nothing left for this Court to say on the issue.